



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0213, EPA-R04-OAR-2014-0767, EPA-R04-OAR-2014-0426;

FRL-9986-17-Region 4]

**Air Plan Approval; KY; Minor Sources Infrastructure Requirement for the 2012 PM_{2.5},
2010 NO₂, and 2010 SO₂ NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of three State Implementation Plan (SIP) submissions, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ) on April 26, 2013 (two submissions), and February 8, 2016. The submissions address requirements for implementation of the 2012 Fine Particulate Matter (PM_{2.5}), 2010 Nitrogen Dioxide (NO₂), and 2010 Sulfur Dioxide (SO₂) national ambient air quality standards (NAAQS). When EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires the state to make a new SIP submission establishing that the existing SIP meets the various applicable requirements, or revising the SIP to meet those requirements. This type of SIP submission is commonly referred to as an “infrastructure” SIP. In this proposed action, EPA is proposing to approve the portions of these infrastructure SIP submissions from Kentucky that relate to the minor source program requirements for the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Nos. EPA-R04-OAR-2016-0213, EPA-R04-OAR-2014-0767, EPA-R04-OAR-2014-0426 at <http://www.regulations.gov>.

Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via electronic mail at notarianni.michele@epa.gov or the telephone number (404) 562-9031.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 110 of the CAA, states are required to have SIPs that provide for the implementation, maintenance, and enforcement of the NAAQS. States are further required to make a SIP submission meeting the applicable requirements of sections 110(a)(1) and (2) within three years of EPA promulgating a new or revised NAAQS.¹ EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs; section 110(a)(2) lists specific elements that states must meet for infrastructure SIPs related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

This action pertains to one of the requirements of section 110(a)(2) that is relevant in the context of a state's development, and EPA's evaluation of, infrastructure SIP submissions: the minor source requirements of section 110(a)(2)(C). Specifically, this action pertains to the Kentucky infrastructure SIP submissions for the 2012 annual primary PM_{2.5}, 2010 primary NO₂,

¹ See EPA's May 10, 2017, action proposing to approve other portions of Kentucky's infrastructure SIP submittal for the 2012 PM_{2.5} NAAQS for a discussion of EPA's general approach to reviewing infrastructure SIP submittals. 82 FR 21751.

and 2010 primary SO₂ NAAQS. All other applicable infrastructure requirements for the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS for Kentucky are being or have been addressed in separate rulemakings.

A brief background regarding the NAAQS relevant to today's proposal is provided below. For comprehensive information on these NAAQS, please refer to the Federal Register rulemakings cited below.

a. *2012 PM_{2.5} NAAQS*

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA revised the primary annual PM_{2.5} NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³. States were required to submit infrastructure SIP submissions for the 2012 annual PM_{2.5} NAAQS to EPA no later than December 14, 2015. For the 2012 PM_{2.5} NAAQS, EPA is proposing to approve the minor source element of the infrastructure SIP submission submitted by KDAQ on February 8, 2016.²

b. *2010 NO₂ NAAQS*

On January 22, 2010 (75 FR 6474, February 9, 2010), EPA established a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. States were required to submit infrastructure SIP submissions for the 2010 NO₂ NAAQS to EPA no

² EPA approved portions of Kentucky's February 8, 2016, PM_{2.5} infrastructure submission in a separate action. *See* 82 FR 37012 (August 8, 2017). EPA has not yet acted on the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) for the 2012 PM_{2.5} NAAQS.

later than January 22, 2013. For the 2010 NO₂ NAAQS, EPA is proposing to approve the minor source element of the infrastructure SIP submission submitted by KDAQ on April 26, 2013.³

c. *2010 SO₂ NAAQS*

On June 2, 2010 (75 FR 35520, June 22, 2010), EPA revised the primary SO₂ NAAQS to an hourly standard at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. States were required to submit infrastructure SIP submissions for the 2010 1-hour primary SO₂ NAAQS (“2010 SO₂ NAAQS”) to EPA no later than June 2, 2013. For the 2010 SO₂ NAAQS, EPA is proposing to approve the minor source element of the infrastructure SIP submission submitted by KDAQ on April 26, 2013.⁴

II. What are States Required to Address Under Section 110(a)(2)(C) Related to the Minor Sources Element?

Section 110(a)(2)(C) requires SIPs to “include a program to provide for the enforcement of the measures described in subparagraph (A) [i.e., enforceable emission limitations and measures], and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including the permit program as required in parts C and D of this subchapter.” Generally, EPA summarizes the requirements of 110(a)(2)(C) as requiring that SIPs address three components: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and prevention of significant deterioration (PSD) permitting of major sources and major

³ EPA approved portions of Kentucky’s April 26, 2013, NO₂ infrastructure submission in separate actions. *See* 81 FR 83152 (November 21, 2016), and 80 FR 14019 (March 18, 2015). EPA has not yet acted on the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) for the 2010 NO₂ NAAQS.

⁴ EPA approved portions of Kentucky’s April 26, 2013, SO₂ infrastructure submission in a separate action. *See* 81 FR 87817 (December 6, 2016). EPA has not yet acted on the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) for the 2010 SO₂ NAAQS.

modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the PSD program).⁵ EPA is proposing action only on the minor source program element of 110(a)(2)(C) for Kentucky’s infrastructure SIP submissions for the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS.

EPA rules addressing SIP requirements for pre-construction regulatory programs that apply to minor sources and minor modifications are at 40 CFR 51.160 through 51.164. Pursuant to the 2013 guidance, EPA’s review of infrastructure SIP submissions with respect to the minor source requirements in section 110(a)(2)(C) focuses on assuring that the state’s SIP meets basic minor source program requirements. Thus, EPA evaluates whether the state has identified existing EPA-approved SIP provisions (or submitted for approval new provisions) containing requirements for minor sources and minor modifications (minor new source review (NSR) program) and whether the program addresses the pollutants relevant to that NAAQS.⁶

III. What is EPA’s Analysis of How Kentucky Addressed Section 110(a)(2)(C) Related to the Minor Sources Element?

On April 26, 2013, and February 8, 2016, KDAQ submitted infrastructure SIP submissions to EPA that addressed the minor source element of section 110(a)(2)(C) for the pollutants relevant to the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS, in addition to other

⁵ EPA has long noted that a literal reading of the statutory provision to meet all requirements of section 110(a)(2) on the schedule provided in section 110(a)(1) would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment area SIP requirements. *See id.* at 4. For example, section 110(a)(2)(C), in part, pertains to the permit program required in part D of the CAA, which are nonattainment SIP requirements. The provisions in section 172(b) for submission of such plans for nonattainment areas differ from the timing requirements for an infrastructure SIP submission under 110(a)(1). Thus, rather than applying all the stated requirements of section 110(a)(2) in a strict, literal sense, EPA has determined that certain provisions like the part D permit program requirements in 110(a)(2)(C) and 110(a)(2)(I) are not applicable for a particular infrastructure SIP submission. *See generally* “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013 (hereinafter, “2013 Guidance”), at 4-5, 24, and 52.

⁶ 2013 Guidance at 24.

infrastructure SIP requirements. KDAQ also provided clarifying information to EPA on December 18, 2017, and May 2, 2018, describing Kentucky's suite of SIP-approved regulations which comprise the basic structural elements of the minor source program in the Commonwealth.⁷ Specifically, the Commonwealth cited to the following Kentucky Administrative Regulations (KAR) under title 401 to meet the minor source SIP requirements: Kentucky's NSR permitting regulations are found at 401 KAR 51:001, *Definitions of Chapter 51*; 401 KAR 51:017, *Prevention of significant deterioration of air quality*; and 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas*. Kentucky addresses requirements for public participation and public availability of information through 401 KAR 52:100, *Public, affected state, and U.S. EPA review*. 401 KAR 50:060, *Enforcement*, establishes legally enforceable procedures. Air dispersion modeling requirements under the NSR permitting process are addressed in 401 KAR 51:017; 401 KAR 51:052; and 401 KAR 50:040, *Air quality models*. 401 KAR 50:065, *Conformity of general federal actions*, sets forth procedures for determining the conformity of general federal actions to the Kentucky SIP and requires consultation between federal government and state government, and, as applicable, any local agency. 401 KAR 50:042, *Good engineering practice stack height*, addresses stack height requirements. Further, Kentucky's May 2, 2018, correspondence describes how minor sources are evaluated in the NSR permitting process, including how these sources are incorporated into NSR air dispersion modeling analyses as relevant to each case.

Based on the information Kentucky provided in its SIP submissions dated February 8, 2016, and April 26, 2013, and clarified in correspondence to EPA dated December 18, 2017, and

⁷ Kentucky correspondence to EPA dated December 18, 2017, and May 2, 2018, are in each of the dockets for this action under "Proposed Rule-2."

May 2, 2018, EPA is proposing to determine Kentucky has a SIP-approved minor NSR program that addresses the pollutants relevant to the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS. EPA has therefore made the preliminary determination that Kentucky's SIP satisfies section 110(a)(2)(C) for new and modified minor sources and minor modifications of major sources related to the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS.

IV. Proposed Action

As described above, EPA is proposing to approve the portions of the infrastructure SIP submissions from Kentucky dated February 8, 2016, and April 26, 2013, addressing the minor source requirements of section 110(a)(2)(C) of the CAA for the 2012 PM_{2.5}, 2010 NO₂, and 2010 SO₂ NAAQS. EPA is proposing approval of the minor source portions of these submissions because they are consistent with section 110 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements,
Particulate matter, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 25, 2018.

Onis “Trey” Glen, III

Regional Administrator,

Region 4.

[FR Doc. 2018-24203 Filed: 11/2/2018 8:45 am; Publication Date: 11/5/2018]